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Supreme Court of the United States

OCTOBER TERM, 1952

No. 502

ATLANTIC COAST LINE RAILROAD COMPANY,
Petitioner, and Appellant Below,

v.

THE STATE OF SOUTH CAROLINA, Ex Relatione THE PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA, and CHARLES A. RICE, J. C. DARBY, JOHN C. CONEY, WINCHESTER SMITH, F. B. HINES, EDWARD WIMBERLY, and RUFUS M. NEWTON as Members of and Constituting THE PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA, and JOHN M. DANIEL, as ATTORNEY GENERAL OF SOUTH CAROLINA, and THE CITY COUNCIL OF CHARLESTON,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF SOUTH CAROLINA (INCLUDING BRIEF IN SUPPORT)

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WILMINGTON PRINTING COMPANY, WILMINGTON, N. C.

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Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF SOUTH CAROLINA (INCLUDING BRIEF IN SUPPORT)

Petitioner, Atlantic Coast Line Railroad Company, prays that a writ of certiorari issue to review a judgment of the Supreme Court of the State of South Carolina entered in this proceeding on September 5, 1952; petition for rehearing denied on Sept. 25, 1952.

OPINION BELOW

The opinion of the Supreme Court of South Carolina is reported in 72 S. E. 2d 438. A copy of it will be seen at page 583 of the transcript of record.

JURISDICTION.

The judgment of the Supreme Court of South Carolina was entered on September 5, 1952, and a petition for rehearing duly filed was denied on September 25, 1952.

The jurisdiction of this Court is invoked under 28 U.S.C., Section 1257(3), providing that final judgments entered by the highest court of a state in which a decision may be had, could be reviewed by the Supreme Court by writ of certiorari, where any right is especially set up or claimed under the Constitution or statutes of the United States.

The judgment complained of affirmed a decision of the Court of Common Pleas for Charleston County, S. C., granting a writ of mandamus to enforce compliance with an order of the Public Service Commission of South Carolina, which latter order directed and required petitioner and Southern Railway Company "to forthwith rebuild their passenger station building in the City of Charleston, South Carolina, on the site of the station building which burned January 10, 1947, and thereafter to inaugurate passenger train service thereto and therefrom" (Rec. p. 15-30).

The federal questions sought to the reviewed were raised by motion and answer filed by petitioner in the proceedings before the Public Service Commission of South Carolina (Rec. p. 11), and were decided adversely to the petitioner by that Commission in its order No. 7271 (Rec.p.15). They were raised again in the Court of Common Pleas in petitioner's return to the rule to show cause why the writ of mandamus should not issue (Rec. p. 103), and were decided adversely to the petitioner by the judgment of that court entered February 10, 1951 (Rec. p. 130). They were again raised by exceptions filed by petitioner in the Supreme Court of South Carolina (Rec. p. 577), and were decided adversely to the petitioner by that court by its judgment entered September 5, 1952 (Rec. p. 583).

The judgment complained of adjudicates against petitioner substantial and important rights claimed under the statutes and Constitution of the United States, and the Supreme Court of the United States has jurisdiction of the case.

QUESTIONS PRESENTED

The questions presented, which, among other things, reveal the need for a sound demarcation or adjustment of the respective jurisdictions of state commissions and the Interstate Commerce Commission in the matter of the construction of expensive passenger stations, are:

1. Whether the state authorities of South Carolina may require the restoration of an expensive union passenger station destroyed by fire in 1947, which necessitates operation under trackage rights by one of the tenant lines over the main line of the other, without first obtaining the approval of the Interstate Commerce Commission.

2. Whether, under the Commerce and Due Process Clauses of the Federal Constitution, the state authorities of South Carolina can compel the rebuilding by petitioner and Southern Railway at an estimated minimum cost of $400,000 of a union passenger station in the City of Charleston, South Carolina, which was destroyed by fire in the year 1947, in view of the fact that petitioner operates and maintains within approximately 6 miles of the site of the burned station, a separate passenger station of its own which is adequate and sufficient to serve, and does adequately and sufficiently serve the public convenience and necessity of the Charleston area.

3. Whether the South Carolina state authorities can compel petitioner to operate interstate passenger trains into and out of such rebuilt union station, there being, by the authority and approval of the South Carolina Public Service Com-

mission, no intrastate trains operated by the petitioner to or from that site.

4. Whether an order of the State Commission requiring the inauguration of passenger train service to and from the site of said station is valid and constitutional where that issue was not before the Commission and no evidence was taken by the Commission to show what, if any, service was needed, or the practicability of operating said service under modern conditions.

STATUTES INVOLVED.

The pertinent statutory provisions are Sections 1(18)-(21), 3(5), 5(2), and 5(4), of the Interstate Commerce Act, Title 49 U.S.C. Sections 1(18)-(21), 3(5), 5(2), and 5(4). These statutes are printed in the Appendix, pp. i-vii.

STATEMENT.

Petitioner and Southern Railway Company for many years operated passenger train service, interstate and intrastate, to and from Charleston, S. C., and until January 10, 1947, afforded passenger station facilities at Columbus and Bay Streets in the City of Charleston, through the Charleston Union Station Company as their jointly owned agency and instrumentality.

Petitioner also maintains, and has maintained for a number of years, a separate passenger station known as "North Station", located outside of the corporate limits of the city about six miles from the site of the old station, which also serves the City of Charleston.

Petitioner's main line tracks extend down into Charleston and connect with the trackage of the Union Station at the site of the passenger station. Southern's line does not reach the station and in order to gain access thereto it has operated over

the main line of petitioner for approximately two miles under a trackage agreement between petitioner and Southern.

The Union Station was destroyed by fire on January 10, 1947. At that time petitioner's only passenger trains using that station were trains Nos. 80 northbound, and 89 southbound, which operated interstate between Richmond, Va., and Jacksonville, Fla., trains Nos. 77 southbound, and 78 northbound, which operated interstate between Richmond, Va., and Savannah, Ga., and trains Nos. 52 and 53, which operated intrastate between Sumter, S. C. and Charleston, S. C. All other Coast Line passenger trains, namely, trains Nos. 375, 376, 75, 76, 1, 2, 7, 8, 91 and 92, which served the Charleston area, used the North Station and did not enter the Union Station. (Rec. p. 564).

In August 1947 petitioner's interstate trains Nos. 80 and 89, which operated between Richmond and Jacksonville and formerly used the downtown station were discontinued south of Florence, S. C., and no longer operate to and from Charleston. On July 11, 1950, petitioner's intrastate trains Nos. 52 and 53, which operated between Sumter and Charleston and formerly used the downtown station were discontinued pursuant to authority of the Public Service Commission due to the lack of patronage and the expense of operating those trains (Rec. p. 51). Of the trains which formerly used the downtown station at the time of the fire in 1947 only interstate trains Nos. 77 and 78, operating between Richmond and Savannah, are in operation. Those trains now use petitioner's North Station. (Rec. p. 564).

Southern Railway operates one interstate passenger train into and out of Charleston and no intrastate trains (Rec. p. 559, 576). Upon destruction of the Union Station in 1947, it established temporary passenger facilities on its property in another section of the city, and it alleges that it is ready and willing to establish adequate passenger station facilities on prop-

erty owned by it on or near Ann Street in said city. (Rec. p. 540). By an instrument dated September 29, 1947, it cancelled its trackage agreement with Coast Line covering the use of the latter's tracks to reach the Union Station, effective Jan. 25, 1947, and since that time has not used the Union Station. (Rec. p. 529).

The State Commission, after hearing, directed petitioner and Southern Railway to rebuild the Union Station on the site of the old building, and to inaugurate passenger train service thereto and therefrom (Rec. p. 29).

Evidence introduced before the lower court indicated that based upon the present day costs, the rebuilding of the station in accordance with the former plans and specifications would amount to $811,454, but that by use of some of the old foundation and undamaged parts of the building, the minimum cost would be around $400,000 (Rec. p. 562). The evidence before the lower court also shows that for the year preceding the fire the operating expenses of the Charleston Union Station amounted to $145,414.85 (Rec. p. 568), and that in addition to the cost of operating and maintaining the station itself, it would cost petitioner an additional amount of $7,088.30 per annum for each train operated into and out of the old station site (Rec. p. 567).

The evidence before the lower court showed that the passenger trains which formerly used the downtown station left the main line at North Charleston and ran down to a "Wye" track switch, a distance of 5.8 miles, turned around the "Wye" to turn the train, and backed into the station tracks. This method of operation was necessary so that the train would be in regular order with engine on head end of train when the train departed from the station on the outbound trip. The trip into and out of the union station added thirteen miles to the trips of Trains 77, 78, 80, and 89, and approximately thirty minutes to the schedules of trains 77 and 78, and forty minutes to the schedules of trains 80 and 89 (Rec. p. 566). Evi-

dence introduced in the lower court showed also that because of the length of petitioner's modern passenger trains and of the limited trackage facilities at the union station site, none of the passenger trains serving the Charleston area presently operated by petitioner, except trains 77 and 78, are of such short length as will permit of their operation into and out of the Charleston Union station (Rec. p. 566).

SPECIFICATION OF ERRORS URGED.

The Supreme Court of South Carolina erred:

(1) In holding that the state authorities of South Carolina could require the construction of the Union Passenger Station without first obtaining the approval of the Interstate Commerce Commission.

(2) In holding that the state authorities could compel the rebuilding by petitioner and Southern Railway of the said Union Passenger Station despite the fact that petitioner operates and maintains a separate passenger station of its own which is now adequately and sufficiently serving the public convenience and necessity of the Charleston area.

(3) In holding that the South Carolina state authorities could compel petitioner to operate interstate passenger trains into and out of said Union Passenger Station.

(4) In affirming the judgment of the lower court.

REASONS FOR GRANTING THE WRIT.

Question (1)

The Conflict of Jurisdiction between the State Commission and the Interstate Commerce Commission.

The judgment complained of is not in accord with the decisions of this Court in the so-called Los Angeles Passenger

Station Cases, *Railroad Commission of the State of California v. So. P. R. Co. et al.*, 264 U. S. 331, 68 L. ed. 713 (1924); *Interstate Commerce Commission v. U. S.*, 280 U. S. 52, 74 L. ed. 163 (1929); and *A. T. & S. F. Ry. Co. v. Railroad Commission of California*, 283 U. S. 380, 75 L. ed. 1128 (1931). In the first Los Angeles case the Supreme Court held that the Railroad Commission of California could not force the construction of a union station at Los Angeles involving large expenditures of money and the relocation of tracks unless and until the Interstate Commerce Commission issued an appropriate certificate under paragraphs (18)-(21) of Section 1 of the Interstate Commerce Act. The Court said:

> "We think, however, that means of control over installation of such new union station for interstate carriers is given to the Interstate Commerce Commission under amended paragraphs (18) to (21) or Section 402." (68 L. ed. at page 718).

The order of the South Carolina Commission is a joint order addressed to petitioner and Southern Railway requiring them to rebuild their union station at the site of the former union station which was destroyed by fire on January 10, 1947, and to inaugurate passenger train service thereto and therefrom.

The minimum cost of constructing the new union station is estimated by the petitioner to amount to $400,000.

The site of the former passenger station is served only by the line of petitioner. Southern Railway, in order to reach the site, has operated over the line of the petitioner under a trackage agreement pursuant to which the Southern was granted trackage rights "over the line of double track railway of the Coast Line" from a point of connection of the two lines north of Magnolia Avenue, to the station site, a distance of 11,487 feet "for the purpose of running thereon the passenger trains and passenger engines of the Southern Railway" (Rec. pp. 501, 513). That trackage agreement was terminated effective

January 25, 1947, by mutual consent of the parties in a written agreement dated September 29, 1947 (Rec. p. 529) and Southern has not operated over the trackage since that date, In order now for Southern to reach the station it must either construct its own line or obtain the right to use petitioner's line. The latter would entail an operation over the main line of petitioners for a distance of 2.2 miles.

The only point of difference, except perhaps one of degree, between the Los Angeles Passenger Case and the instant case is that whereas the former involved questions dealing with the construction and abandonment of tracks to serve the station, the instant case involves an operation under trackage rights by one of the tenant lines in order to serve the station. If by reason of the state commission's order Southern was forced to construct a line to reach the station site the Los Angeles case would be on all-fours with the instant case. Here, however, the order apparently contemplates that Southern Railway would gain access to the station site by operating over petitioner's line. That difference is without significance on the question whether Interstate Commerce Commission approval is required.

In *Transit Commission v. U. S.*, 289 U. S. 121, 77 L. ed. 1075 (1933), the Court held that the provisions of Paragraph (18) of Section 1 applied to the abandonment of operations under trackage agreements. See also *Thompson v. Tex.-Mex. R. Co.*, 328 U. S. 134, 90 L. ed. 1132 (1946). In addition, the 1940 amendment to the Transportation Act now expressly provides in Sec. 5(2) (a):

> "It shall be lawful, with the approval and authorization of the Commission, as provided in subdivision b)-* * * *
>
> (ii) for a carrier by railroad to acquire trackage rights over, or joint ownership in or joint use of, any railroad line or lines owned or operated by any other such car-

rier, and terminals incidental thereto." [Title 49, U.S.C.A. Sec. 5(2) (a)].

Section 5(4) makes it unlawful

"for any person, except as provided in paragraph (2), to enter into any transaction within the scope of subparagraph (a) thereof." (Title 49 U.S.C.A., Sec. 5).

Under this statute, if the Southern and the Coast Line should attempt to enter into a trackage agreement for the use of the Coast Line's trackage by the Southern to reach the station site, without the approval of the Federal Commission, both of them would be guilty of violation of the law. *Thompson v. Tex.-Mex. R. Co., Supra.*

In addition to those direct prohibitions of the federal statute, the intent of Congress to commit to the Interstate Commerce Commission questions of terminal facilities is further revealed in Sec. 1(21) and Sec. 3(5) of the Interstate Commerce Act [Title 49 U.S.C.A., Secs. 1(21), 3(5)] which empower the Federal Commission to require the carrier to extend its line, or lines, and to require one carrier to permit another carrier to use its terminal facilities, including main line track or tracks for a reasonable distance outside of such terminal.

This Court has repeatedly said that among the primary purposes of the Transportation Act of 1920 are the avoidance of waste and the freeing of interstate commerce from undue burdens imposed by state regulatory authorities, *Colo. v. U. S.*, 271 U. S. 153 70 L. ed. 878 (1926); *Railroad Comm. v. Sou Pac. R. Co., supra.* In the Los Angeles Passenger Station Case, the Court held that the Interstate Commerce Commission could reach the expenditure for a union station required by the state in that case because it involved construction and abandonment of trackage. By the same token that Commission has jurisdiction of the proposed construction of the union station required by the state authorities in this case through

the medium of the required operation under trackage rights by one tenant line over the trackage of the other.

The state court apparently grounded its judgment upon the theory that the abandonment of the station and of Southern's operating rights had taken place without the permission of the state commission, and that the situation was, to all intents and purposes, the same as if these facilities had not been abandoned or discontinued. The court holds:

> "The respondents could not lawfully discontinue the station without the Public Service Commission's authority, under Rule 14. . . . The trackage agreement was a necessary incident to the maintenance and operation of the union station as established by the respondents, and their attempted cancellation without the authority of the Commission under Rule 14 was invalid."

It may be remarked in passing that any jurisdiction which the state commission might otherwise have in the matter of operations under trackage rights has been superseded by the jurisdiction conferred upon the federal commission in the Transportation Act of 1920. *Thompson v. Tex.-Mex. R. Co., supra.*

Moreover, the court's holding is unrealistic. The closing or discontinuance of the station is a *fait accompli,* caused not by the act of the petitioner and the Southern Railway but by the destruction of the station by fire. The trackage agreement was cancelled pursuant to its terms. The operation by Southern Railway over petitioner's trackage under the trackage agreement was abandoned five years ago. Conceivably Southern may have improperly abandoned the *operation* under the trackage agreement (*Thompson v. Tex.-Mex., supra*) and thereby incurred the penalties of the federal act but nevertheless the operation was discontinued, with no indication on the part of the Southern of any intention to resume the operation unless compelled to do so.

There is at present no station at the site of the former station. The Commission's order requires one to be built. That would cost money. That money would have to come out of the carriers' revenues as of today. Southern Railway has no right to use petitioner's facilities to reach the station site, and in order for it to serve the station it must construct a new line, or enter into a new trackage agreement with the petitioner, [to which petitioner says it will object (Rec. p. 444)], or apply to the federal commission for an order requiring the use of such terminal facilities. All of these are questions for the Interstate Commerce Commission.

Whether or not the facilities were improperly discontinued is beside the point. The substantial question is with respect to the effect and impact of the state commission's order upon the transportation situation and upon the carriers' revenues as of today.

The court plainly erred in holding in effect that the jurisdiction of the Interstate Commerce Commission to consider questions properly cognizable by that commission was ousted by reason of the fact that the facility had been discontinued five years ago without the permission of the state authorities.

QUESTION (2)

Whether Judgment Violates Due Process Clause.

Petitioner now maintains and operates a good and sufficient passenger station at Charleston North Station which serves the city of Charleston. That station was erected in 1927 and has been added to from time to time as the need therefor arose. In 1944 the waiting rooms and ticket office were enlarged at an expenditure of $16,600 (Rec. p. 385). A mail room was added in 1947 when the downtown station was destroyed by fire. The station is maintained 24 hours a day, has 4 ticket sellers, 1 baggage agent, one baggage clerk and 7 porters. In

addition, petitioner maintains a city ticket office in the Francis Marion Hotel in downtown Charleston for the convenience of petitioner's passengers (Rec. pp. 420-422).

The Charleston North Station is located to the west of Charleston at the junction of petitioner's north-south main line and the line leading to the downtown station. It is approximately 6 miles from the downtown station. It is nearer to the center of population of the greater Charleston area than is the site of the former downtown station, and since Charleston, because of its geographical location, being bounded on the east by the ocean, must necessarily expand to the west, its location will become increasingly more convenient to the traveling public of Charleston.

At the time of the destruction of the downtown station, the great bulk of petitioner's passenger travel was already using the Charleston North Station. Since then all of petitioner's Charleston passenger travel uses the Charleston North Station. Any need which may have existed in the past for the downtown station has now vanished.

The power of the State Commission to regulate is not unlimited and must be exercised within constitutional bounds. Under the guise of regulation the property of a railroad may not be taken by requiring it to furnish services or facilities not reasonably necessary to serve the public.

> *A.T. & S.F.R. Co. v. Railroad Comm.*, 283 U. S. 380, 75 L. ed. 1128 (1931);
>
> *Penna.-Reading Sea. Lines v. Board of P.U.C.* (*N. J.*) 74. A. (2d) 265, 5 N. J. 114 (1950);
>
> *A.C.L.R.R. Co. v. Pub. Serv. Comm.*, 77 F Supp. 675 (D.C.E.D.S.C. 1948).

We are not here dealing with the so-called absolute or charter duty of the carrier to furnish a transportation facility. The petitioner has furnished to the people of Charleston a good and sufficient passenger station and is being required

by the State Commission's order to add to those facilities by the construction of an additional downtown station. In that situation the matter of cost to the company is of controlling importance, and the cost of the project must be weighed against the need of the public for the additional facility.

Atlantic Coast Line R. Co. v. Pub. Service Commission, supra;

Mo.-Kansas-Texas R. Co. v. State, 119 P. (2d) 835, 189 Okla. 685 (1941);

Penna.-Reading Seashore Lines v. Board of P.U.C., supra.

In *Missouri-Kansas-Texas R. Co. v. State, supra,* the Court said:

> "So far as the issues in this case are concerned, the absolute duty of the company could be no more than to furnish reasonably adequate mail and express facilities along the line of road in question. Beyond that requirement the point of consideration resolves itself into one of convenience to the public as counter-balanced with cost to the company. If reasonably adequate service is being rendered by the facilities in use, the item of cost of additional facilities is the controlling factor. The furnishing of any facilities in excess of those that are essential to reasonably adequate service is not to be classed among the absolute, or charter, duties of the company.
>
> 'The cost of any facilities that the state may require in addition to reasonably adequate facilities for the performance of an absolute duty is of extreme importance. To require such facilities at a loss to the carrier would be arbitrary and unreasonable, and would serve to deprive the carrier of its property without due process of law."

Viewed in the light of those principles, the conclusion is inescapable that the State Commission's order is grossly unreasonable and arbitrary. On the one hand there is the cost of several hundred thousand dollars which petitioner and South-

ern Railway would have to pay to construct the station, the added cost of having to maintain and operate the station which in the last year of the operation of the former station amounted to $145,000, and the added cost to petitioner of $7,000 to $8,000 per train per annum which petitioner would incur in the operation of trains into and out of the station. Against those costs the sole public convenience and necessity to be served by the downtown station would be that passengers in the vicinity of the station would be nearer to the station.

The only two intrastate passenger trains (the Sumter-Charleston trains) operated by petitioner to and from Charleston have been discontinued by authority of the Commission for lack of patronage. Of the Charleston trains which formerly used the downtown station only trains Nos. 77 and 78 are now in operation. The state commission's order as construed by the lower court requires the restoration of "the trains now in service which used the station at the time of the fire." The state commission's order, therefore, is tantamount to the requirement that the downtown union station be rebuilt in order that trains Nos. 77 and 78, which now use the north station, can be operated to and from the downtown station.

Plainly to require petitioner to incur the heavy costs of complying with the commission's order where the petitioner already maintains an adequate station and service in suburban Charleston, and there is no substantial need for the downtown station would be unjust, unreasonable, arbitrary, and in contravention of the due process clause of the Federal Constitution.

Question (3)

The Burden Upon and the Attempted Regulation of Interstate Commerce

The heavy expense incident to the construction and operation of the station pursuant to the commission's order, cou-

pled with the absence of any real need therefor, of itself casts an undue burden upon petitioner's interstate revenues and is a burden upon interstate commerce.

Colorado v. U. S., 271 U. S. 153, 70 L. ed. 878 (1926);

P. R. Co. v. Driscoll, 198 A. 130, 330 Pa. 97 (1938).

The part of the commission's order which requires the inauguration of passenger train service constitutes a direct interference with interstate commerce. The only trains which now serve Charleston are through interstate trains, the intrastate trains having been discontinued by authority of the state commission because of the lack of patronage. These trains already serve Charleston at the North Station. The commission's order requires the operation into and out of the downtown station of interstate trains Nos. 77 and 78 which now use the North Station. That would add 13 miles to their trips and would slow the schedules of those interstate trains by approximately 30 minutes. This would be direct regulation of interstate commerce. *So. Pac. Co. v. Arizona*, 325 U. S. 761, 89 L. ed. 1915 (1945); *St. L. & S.F. R. Co. v. Comm.*, 254 U. S. 535, 65 L. ed. 389 (1921); *Missouri, K. & T. R. Co. v. Texas*, 245 U. S. 484, 62 L. ed. 419 (1918).

In *Atlantic Coast Line R. Co. v. Wharton*, 207 U. S. 328, 52 L. ed. 230 (1907), in which this Court struck down an order of the state commission of South Carolina requiring a railroad company to stop on signal two of its three through interstate trains at a small town in South Carolina, the Court said:

> "That any exercise of state authority, in whatever form manifested, which directly regulates interstate commerce, is repugnant to the commerce clause of the Constitution, is obvious. It hence arises that any command of a state, whether made directly or through the instrumentality of a railroad commission, which orders,

> or the necessary effect of which is to order, the stopping of an interstate train at a named station or stations, if it directly regulates interstate commerce, is void."

In *Mo. K. & T. R. Co. v. Texas, supra,* in which the Court struck down an order of the state commission which undertook to fix the time allowed for stops in the course of interstate transit, the Court said:

> "The question is not what the State Commission might require of a road deriving its power from the state, with regard to local business (Missouri P.R. Co. v. Kansas, 216 U. S. 262, 283, 54 L. ed. 472, 481, 30 Sup. Ct. Rep. 330), but whether the order, if applied to this case, would not unlawfully interfere with commerce among the states.
>
> "On its face the order as applied was an interference with such commerce."

The judgment complained of is not in accord with those decisions, and for that reason should be reviewed.

Question (4)

Whether the Service Portion of the Order is Valid where the Question of Passenger Train Service was not in Issue and no Evidence was Produced thereon.

The second requirement of the commission's order which deals with the establishment of passenger train service to and from the station is not only wholly unsupported by evidence, but, according to the statement of plaintiff's own counsel in proceedings before the commission, the matter of passenger train service was not in issue in the proceedings before the commission. At the hearing before the commission the following colloquy took place between Mr. Belser, counsel for the plaintiff, and Mr. Howell, counsel for the petitioner:

> "Mr. Belser: This seems to me, Mr. Baskin, the question of the establishment of a Union Station in

> Charleston, we are not concerned now with the passenger train service, are we. It doesn't seem to me that it is involved in this case.
>
> Mr. Howell: Mr. Belser, doesn't the number of trains that may reasonably be expected to use the station have something to do with the necessity for the station?
>
> Mr. Belser: Why certainly, but that's another problem, dealing with the service that's coming into the City of Charleston."

No evidence was introduced before the Commission to indicate what train service, if any, should now be operated to and from the rebuilt station. The only two intrastate trains which served Charleston at the time of the fire have been discontinued for lack of patronage by authority of the state commission, after hearing. There is no evidence to show what public need, if any, there is for train service to and from the old station site, or how much the service would cost. In short, the Commission, in so far as the matter of the inauguration of service is made a part of its order, has simply ruled blindly that the carriers must operate into and out of the union station at Charleston the same passenger trains now in service which operated into and out of that station five years ago.

The Supreme Court of South Carolina has held that before the South Carolina Commission can require a carrier to furnish a transportation facility there must be a "full hearing and investigation of the facts". *Darby v. Southern Ry Co.*, 10 S.E. (2d) 465, 194 S.C. 421 (1940).

In *Alabama Pub. Serv. Comm. v. So. Bell T. & T. Co.*, 42 S. (2d) 655, 253 Ala. 1 (1949), the Court said:

> "It must be true that when an administrative body is authorized to act only after hearing, its action must be based upon findings supported by the evidence adduced at the hearing. When an order is based upon findings without evidence to support them, as herein-

> above defined, the order is arbitrary as a matter of law and a denial of due process."

In the case of *Morgan v. United States*, 298 U. S. 468, 480-482, 56 S. Ct. 906, 911, 80 L. ed. 1288, 1294-1295, this Court said that "there must be evidence adequate to support pertinent and necessary findings of fact", and that "findings based on the evidence must embrace the basic facts which are needed to sustain the order." The Court held that the regulatory body must consider the evidence, be guided by it alone, and reach conclusions uninfluenced by any extraneous considerations.

In *B.&O. R. Co. v. U. S.*, 264 U. S. 258, 68 L. ed. 667 (1924), it is stated.

> "To refuse to consider evidence introduced or to make an essential finding without supporting evidence is arbitrary action."

Plainly, the order of the Commission requiring the inauguration of passenger train service to and from the rebuilt station without any hearing or evidence as to the present public need for such service, is "arbitrary as a matter of law and a denial of due process". *Ala. Pub. Serv. Comm. v. So. Bell T. & T. Co., supra.*

CONCLUSION

In conclusion, petitioner respectfully submits that for the reasons stated herein, a writ of certiorari to the Supreme Court of South Carolina should be granted and that this Court should review and reverse the judgment of the said Supreme Court of South Carolina upholding the writ of mandamus issued by the lower court requiring obedience to the order of the state commission directing petitioner and Southern Railway to "rebuild their passenger station building in the city of Charleston, S. C. on the site of the station building

which burned January 10, 1947, and thereafter to inaugurate passenger train service thereto and therefrom."

Respectfully submitted,

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